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**It's easier to assume guilt than innocence**

By Curtis Seltzer

BLUE GRASS, Va.—I was reading the street-crime stories in the Wall Street Journal just before leaving the house in the morning when my wife, Melissa, came through the living-room door dressed for court.

Without preliminaries, she asked: "What have you done with my makeup bag?"

This was a stumper.

"What have I done with your makeup bag?"

"Right," she said. "There's no need to repeat my question."

"I don't think I've done anything with your makeup bag. I didn't even know that you had one."

"A predictable alibi," she said.

"Why do you think I would do anything with your makeup bag?"

"Because is an excellent reason. And, for another, I haven't been able to find it for two days."

"What exactly do you think I might have done with your missing makeup bag?"

"That's what I'm trying to find out. At least we're on the same page."

I confess that I, too, have trouble extending the presumption of innocence to suspects. And it becomes even harder once the suspect is charged.

Some years ago, I was called for jury duty in a federal drug case. I told the judge that I should be excused, because, I said, the defendant, in my opinion, looked like a dealer. (Or, at least, he looked like how I imagined a big-time, smuggler-dealer might look; I don't know any of these boys personally.)

The judge granted my request. Minutes later, the defendant's lawyer cut a deal.

I scolded myself for jumping to a conclusion based solely on the defendant's clothes, manner, wife and the tonnage in gold chains they had looped around their necks like dueling horse collars. Still, I felt what I felt, and I thought that I could not be impartial given my pretrial prejudice.

I ran into the dealer's lawyer a year or so later...in Melissa's law office. He thanked me for "kicking" some sense into his client...who had been pushing for a jury trial.

In 1968 when I was a barely-scraping-by graduate student in New York City, I was accused of and arrested for second-degree burglary. Falsely accused, I should add.

It's a funny story...now.

I had been looking for my lost dog, "HeyDog," on a cold November evening as two guys I didn't know were robbing the apartment next to the front entrance of my five-story building on the edge of Harlem. I asked the robbers about HeyDog as they were carrying stuff out of the victims' apartment. I thought they were moving out. I did not give them a hand. The two victims apparently saw me talking to the perps and assumed I was part of the heist.

I will leave out the two street scuffles later that night with the victims who spoke no English; the minor stabbing with a sharpened car antenna; my arrest in St. Luke's emergency room; the belt-free night in jail; the charge that I'd lifted a tv set and seven iridescent suits size 26 (I was a 43L); the booking; the fingerprinting; the refusal of the police to search my apartment that night; the ride

downtown early the next morning with a half-dozen ladies of the evening who said I was "cute and should come around"; the advice of two Columbia professors; the advice of my-then girlfriend, a student at Yale Law School, to cut a deal since I had no money to hire a criminal-defense lawyer; the interview with a prominent State Senator, a liberal lawyer, who told me I should hire a private investigator to dig up dirt on the robbery victims and retain him at \$3,500 for his preliminary efforts; the lie-detector test where I was asked if I had ever taken anything from the victims and I answered "No." but thought "Well, yes, I took the antenna away from them after being stabbed with it."; the appearance before a grand jury where I went through this whole ridiculous tale for two hours with no one in the room under 60; my failure to produce HeyDog as a defense witness; the kind lawyer, Jack Hoffinger, who represented me for \$1,000, which I paid in dribs during the next year from part-time jobs and reduced caloric intake; and, notably, the dropping of the charges after I "passed" the lie-detector test. (These are the barest bones of this saga. The fully fleshed telling takes a good hour, followed by time for Q&A.)

Not once in this seven-month case -- during which the both victims were swearing under oath that they had seen me in their apartment taking their valuables -- did I feel that our criminal-justice system gave me the presumption of innocence. The seen-it-all sergeant on the night desk at the 26th precinct on W. 126th asked me from his bench, "Why'd you do it, kid?" Had I not had a skilled lawyer, this mess would not have ended happily.

I also felt trapped in the adversarial system itself. I had no way to simply talk to the victims who after a while figured out that I was not part of the robbery but did not back away because they were afraid that I would go after them for assault. The police did no investigation at all—two guys told a street cop that I was a burglar and, therefore, I was arrested for burglary. Justice? Fairness? We like to think so.

So you can see why I'm a little touchy on the subject of false accusations.

I asked Melissa where she had last seen her makeup bag. I went upstairs, looked in a couple of places where it should never have been and found it in less than five minutes.

It had become hidden in the folds of a down comforter that had been set aside for storage.

"So where did you put it?" Melissa asked, pleased that I'd made things square, which was an implicit confession of guilt.

"I'm not telling."

Once you're accused, it's hard to be presumed innocent by people who should be presuming so...and even by people who know you are.

I'm now looking for lost innocence. It's around here somewhere. Maybe Melissa knows. I'll ask, but I won't accuse her of knowing where it is or who might have taken it.

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